

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTINA ELIZABETH SEARS,

Defendant-Appellant.

UNPUBLISHED

February 4, 2014

No. 312956

Macomb Circuit Court

LC No. 2011-001765-FC

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial convictions of conspiracy to commit first-degree murder, MCL 750.157a; MCL 750.316, and solicitation of murder, MCL 750.157b(2). The trial court sentenced defendant to life imprisonment with the possibility of parole for the conspiracy conviction and 81 months to 21 years' imprisonment¹ for the solicitation conviction, to run concurrently. We affirm defendant's convictions and sentences, but remand to the trial court for the ministerial task of correcting the judgment of sentence to reflect that defendant was sentenced to 81 months to 21 years' imprisonment for the solicitation of murder conviction.

This case arises from a conspiracy involving Mallorie Wilson-Strat, Jorden Powell, Kevin Sears, David Clark, and defendant to have Kevin Sears's wife murdered. Wilson-Strat was the girlfriend of Kevin Sears at the time, and defendant is Kevin's sister. Kevin Sears and his wife were in the process of obtaining a divorce when the conspiracy developed. Powell and Clark were solicited by Wilson-Strat to commit the murder, with defendant approving of the solicitation. Powell and Clark failed to carry out the murder, as planned, during a home invasion of the victim's house after Wilson-Strat dropped them off at that location. Powell and Clark were thwarted by a child-proof bedroom door handle and then left the victim's home, taking her purse and dropping a knife along the way, before being picked up by Wilson-Strat. However, the conspiracy to murder Kevin Sears's wife continued, but fortunately an undercover officer became involved through an anonymous individual. And the officer was solicited by Wilson-

¹ The judgment of sentence incorrectly states that the trial court sentenced defendant to life imprisonment for the solicitation of murder conviction. According to the sentencing transcript, defendant was sentenced to 81 months to 21 years' imprisonment for the solicitation conviction.

Strat to commit the murder, again with the approval of defendant. The undercover officer's involvement eventually led to the arrest of those involved in the conspiracy, including defendant. Wilson-Strat was tried and convicted of first-degree home invasion, MCL 750.110a(2), solicitation of murder, and conspiracy to commit first-degree murder, and this Court recently affirmed her convictions. *People v Wilson-Strat*, unpublished opinion per curiam of the Court of Appeals, issued November 19, 2013 (Docket Nos. 310877 and 310879). Powell was convicted in a separate trial of conspiracy to commit first-degree murder and first-degree home invasion. Clark and defendant were tried jointly before a single jury; Clark was convicted of the same crimes as Powell. Kevin Sears is awaiting trial. Wilson-Strat was a key prosecution witness against Powell, Clark, and defendant.

I. STIPULATION TO JOINT-TRIAL

Defendant argues that she was denied her right to a fair trial because she was tried jointly with codefendant Clark. On March 22, 2012, defendant filed an emergency motion to consolidate cases and adjourn the trial to April 10, 2012. On March 29, 2012, defendant, Clark, and the prosecution stipulated to the adjournment of defendant's trial and consolidation with Clark's case for trial on April 10, 2012. Consequently, defendant's affirmative agreement to a joint trial constituted a waiver of this issue. *People v Reid (On Remand)*, 292 Mich App 508, 515; 810 NW2d 391 (2011). A waiver extinguishes any error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000).

II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that her trial counsel was ineffective for stipulating to the joint trial. Defendant contends that had she been tried separately or by a separate jury, it is highly likely she would have been acquitted. The gist of defendant's argument is that she and Clark did not act in concert and that Clark engaged in actions separate from defendant, which were far more culpable and violent, in particular the home invasion, unfairly prejudicing the jury against defendant. The underlying premise of defendant's argument is that, had she been tried separately, the evidence regarding Clark and the home invasion would not have been admissible.

Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law, which we review, respectively, for clear error and de novo. *People v Grant*, 470 Mich 477, 484-485; 684 NW2d 686 (2004). To warrant reversal based on ineffective assistance of counsel, a defendant must overcome the strong presumption that counsel's performance constituted sound trial strategy and establish (1) that counsel's performance was deficient, i.e., that it fell below an objective standard of reasonableness, and (2) that the deficient performance prejudiced the defense, i.e., that a reasonable probability exists that, but for counsel's error, the result of the proceeding would have been different. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001); *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). "Ineffective assistance of counsel cannot be predicated on the failure to make a frivolous or meritless motion." *People v Riley (After Remand)*, 468 Mich 135, 142; 659 NW2d 611 (2003).

"On a defendant's motion, the court must sever the trial of defendants on related offenses on a showing that severance is necessary to avoid prejudice to substantial rights of the

defendant.” MCR 6.121(C). “While . . . a joint trial of codefendants presenting antagonistic defenses has serious negative implications for the accused, the standard for severance is not lessened in this situation.” *People v Hana*, 447 Mich 325, 347; 524 NW2d 682 (1994). “Inconsistency of defenses is not enough to mandate severance; rather, the defenses must be ‘mutually exclusive’ or ‘irreconcilable.’” *Id.* at 349. “The tension between defenses [offered at trial] must be so great that a jury would have to believe one defendant at the expense of the other.” *Id.* (citation and internal quotation marks omitted).

Defendant and Clark did not present mutually exclusive or irreconcilable defenses. Clark claimed that he intended only to “rip off” Wilson-Strat and not to kill Kevin Sears’s wife. On the other hand, defendant contended that she intended only to hurt, but not kill, the wife. With respect to defendant’s claim that the evidence concerning Clark and the home invasion would not have been admissible had she been tried separately, defendant fails to explain the legal basis for this conclusion, does not engage in any analysis, and fails to cite any supporting authority. “‘It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’” *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) (citation omitted).

Moreover, we opine that evidence concerning Clark and the home invasion would have been admissible even had defendant been tried separately. Defendant met with Clark before the home invasion in order to see if he was for real and to determine whether he was serious and knew what he was doing. After the home invasion, during which Powell and Clark failed to execute the murder plan, defendant and Wilson-Strat actively engaged in soliciting the undercover officer and planning the envisioned murder. “[I]t is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place.” *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). “The more the jurors kn[o]w about the full transaction, the better equipped they [are] to perform their sworn duty.” *Id.* at 742. “‘It is the nature of things that an event often does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause.’” *Id.* (citation omitted). Here, in order for the jury to have the whole story and understand why defendant and Wilson-Strat, after first plotting with Clark and Powell to commit the murder, turned to the undercover officer, the jurors needed to know that Clark and Powell had failed during the home invasion to carry out the murder. Additionally, the fact that Powell and Clark went as far as entering the victim’s house with weapons reflected the seriousness of the conspiracy and would have been relevant to defendant’s intent when she continued going forward with the conspiracy after the home invasion. An analysis under MRE 401-403 can very well support admission of the evidence at issue. Accordingly, defendant has not established that severance was necessary to protect her against prejudice to her substantial rights, so any severance motion by trial counsel would have been futile. Therefore, the ineffective assistance claim must fail.

For the reasons stated above, defendant also cannot establish the requisite prejudice. There was also overwhelming evidence of defendant’s guilt, especially the evidence and testimony coming from the undercover officer who met directly with defendant and recorded their conversation. Reversal is unwarranted.

We remand to the trial court for the ministerial task of correcting the judgment of sentence to reflect that defendant was sentenced to 81 months to 21 years' imprisonment for the solicitation of murder conviction. In all other respects, we affirm defendant's convictions and sentences. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Pat M. Donofrio

/s/ Karen M. Fort Hood